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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

No. 165

DORA B. HENDRON ET AL.,

Petitioners,

vs.

YOUNT-LEE OIL COMPANY ET AL.

**PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE FIFTH CIRCUIT AND BRIEF AND AU-
THORITIES IN SUPPORT THEREOF.**

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PETITION FOR WRIT OF CERTIORARI.

To the Honorable, the Supreme Court of the United States:

Dora B. Hendron Emil Claude Howard and Glenn Howard, hereinafter styled petitioners, respectfully present this their petition for a writ of *certiorari* as against Yount-Lee Oil Company, a Corporation, Stanolind Oil and Gas Company, a Corporation, Sun Oil Company, a Corporation, Fidelity Royalty Company, a Corporation, and S. G. Smith, all of whom are hereinafter referred to as respondents, seeking thereby to obtain a writ of *certiorari* to review a final decision of the United States Circuit Court of Appeals for the Fifth Circuit, rendered in a case between these parties on the 9th day of January, 1940, and finally, by overruling petition for rehearing seasonably filed in that court by an

order entered on the docket of said court on March 18, 1940, which action of the court affirmed a decree of the United States District Court for the Tyler Division of the Eastern District of Texas, dismissing the bill of complaint of your petitioners exhibited there against all of the respondents.

Your petitioners respectfully file herewith, as an exhibit to this petition, duly certified copies of the record in said cause, including the proceedings in the United States Circuit Court of Appeals; and also file herewith the necessary printed copies of said record and of this petition and the accompanying brief in support of same.

Statement of the Matters Involved.

This was a suit in equity filed in the District Court of the United States for the Eastern District of Texas, at Tyler, and jurisdiction was asserted on the grounds of diversity of citizenship and amount involved, wherein petitioners sought to engraft a trust on a judgment for a tract of land which had been rendered against petitioners and in favor of respondents in the District Court of Wood County, Texas, and which had been by petitioners duly appealed to the Court of Civil Appeals for the Sixth Supreme Judicial District of Texas, in accordance with the law of Texas, and finally affirmed by said Court of Civil Appeals and from which judgment of affirmance your petitioners seasonably filed in the Supreme Court of Texas their application for writ of error, which application was denied. The grounds for relief sought in the bill are that said State court judgments were the result or harvest of a fraudulent conspiracy between the appellate judges and respondents to defraud petitioners out of their property.

The case made by the bill is this: That petitioners are the sole heirs at law of Z. T. Howard, deceased, who in 1904 was lawfully seized of the land involved: that in that year

two valid money judgments were rendered against him and valid executions were issued thereon and the land sold by the sheriff thereunder to one Bass, who bought in good faith and believed he was getting title and his purchase money discharged said judgments, and respondents hold and claim said land by *mesne* conveyance from and under said Bass. Contending that said sheriff's sale and conveyance to Bass was absolutely void and that Bass got no title by his purchase, but was subrogated to said judgment-creditors' claims, and that his possession was in subordination to petitioners right to redeem by doing equity, these petitioners filed suit in the District Court of Wood County, Texas, against the respondents to redeem said land and offered to do equity.

This suit resulted in a "take nothing" judgment against petitioners. This case was duly appealed to the Court of Civil Appeals for the Sixth Supreme Judicial District of Texas, and in due course said Court of Civil Appeals announced its decision in that case (which is copied in full in the record at page 37), and affirmed said judgment, and in due course petitioners duly filed their application for writ of error in the Supreme Court of Texas in accordance with the law of Texas, which application said court dismissed.

By appropriate allegations it was set up that the judges of said appellate court entered into a conspiracy with respondents, wherein and whereby they agreed to affirm said district court judgment irrespective of fact and law, and that said State court judgments were concocted in and the result of such fraud on the part of said appellate judges and respondents. The items making up the judgment so concocted, conceived and rendered in fraud, were set forth, and it was appropriately alleged as a fact, with particularity, conciseness, and clarity that under the law and facts your petitioners were entitled to redeem said land from said void

execution sale, and had it not been that respondents corrupted said courts and said courts had not acted corruptly, judgment would have been rendered for petitioners. Then, by appropriate averments, it was set up that the respondents had acquired the legal title to petitioners' property, under said judgments, by so corrupting the courts, and the prayer is that they be decreed to hold the property as trustees and required to account. These facts were, of course, alleged more at length in the bill.

In response to the bill, the respondents filed their motion to dismiss, because the bill showed the petitioners had had a full hearing and the matter was *res adjudicata* and relief could not be given without setting aside the State judgments and the District Court had no power to set aside the State court judgment (R. 73).

Said District Court sustained the motion and entered judgment dismissing the bill (R. 75).

Transcript of the record containing all the foregoing was in due course lodged in the Circuit Court of Appeals, and upon due consideration the said Circuit Court of Appeals on January 9, 1940, affirmed the decision of the lower court, its opinion being reported as *Hendron v. Yount-Lee Oil Company et al.*, 108 F. (2d) 759 (Supp. R. 38).

In due course, petition for rehearing was duly filed (Supp. R. 42), and on March 18, 1940, the petition was denied (Supp. R. 47).

Thereby expressly holding that, although the District Court had jurisdiction by reason of diversity of citizenship and amount involved, and that the State judgments assailed were concocted in and the result of fraud of the State appellate judges, yet, the matter is res adjudicata and no relief can be given by an independent suit such as this, which we say, is in conflict with the doctrine of Arrowsmith v. Gleason, 129 U. S. 86.

Your petitioners aver that the reasons for requesting this writ of *certiorari* to bring said case to this Court for review, and upon review, reversal, are:

(a) That said Circuit Court of Appeals has decided an important question of Federal law, which (while we contend that by analogy it has been decided by the decisions of *this* Court, and decided contrary to the decision reached by the Circuit Court of Appeals, the decision of which court we fully believe to be contrary to the applicable decisions of *this* Court), should be settled by this Court, and of which the Circuit Court of Appeals in its decision said:

“It is apparent that the judgments of the State court are *res adjudicata* and no relief could be granted without annulling the State courts judgment.”

(b) That said Circuit Court of Appeals has decided an important question of Federal law which, we contend, is in conflict with the doctrine of *Arrowsmith v. Gleason*, 129 U. S. 86.

(c) That said Circuit Court of Appeals has decided an important question of general law in a way probably untenable and in conflict with the weight of authority.

(d) That the questions involved in this case, and which will be presented on this review, are of great and immediate importance to the people of the State of Texas, and to the people of the United States and elsewhere, who may have controversies before the courts of Texas.

Under the allegations of the bill (and, of course, in the present state of the case, they must be taken as true), the judgment and decisions of the State courts complained of, were the result of a fraudulent combine between the appellate judges and the respondents, and if the validity of such judgments so obtained by fraud and brought under inspec-

tion, be upheld as it has been by the lower courts, it seems to us the upholding of such action will be a repudiation of the principles of equity as previously announced by the numerous decisions of this Court in analogous cases.

Finally, we have an abiding conviction that the efficacy of courts and their decrees will be increased and strengthened, when it is known that this high Court will engraft a trust upon a judgment obtained by the fraud of a court or of a judge.

As a part of this petition, and in support of the same, we present herewith a brief. If our brief may seem long, it is no more so than the great importance of the case justifies. We feel that we should be recreant in our duty to our clients and to this Court and unfair to ourselves if we presented the matter less fully.

May it please the Court, therefore, to grant unto petitioners a writ of *certiorari*, to be directed to the judges of said Circuit Court of Appeals for the Fifth Circuit, thereby commanding them, upon the receipt of said writ, to certify and remove said cause, the record therein, and all proceedings thereon, into this Court; and to stand and abide such order and direction as this Court shall deem meet and the circumstances of the case require.

And your petitioners will ever pray,

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